REMARKS

This reply is fully responsive to the Office Action dated January 10, 2008 and subsequent Advisory Action dated April 23, 2008.

Disclosure/Claims Status Summary:

This application has been carefully reviewed in light of the Office Action of January 10, 2008, wherein:

A. Claims 1-16 were rejected under 35 USC § 112, first paragraph;

B. Claims 2-3, 6, 10-11, 14, and 16 were rejected under 35 USC 112, second paragraph;

C. Claims 1-2, 4-10, and 12-16 were rejected under 35 USC 102(e) as being anticipated by Copperman et al. (U.S. Patent No. 6,711,585 B1; henceforth referred to as the Copperman patent); and

D. Claims 3, and 11 were rejected under 35 USC 103(a) as being unpatentable over the Copperman patent in view of Lang and M. Burnett. *Knowledge-Based Systems. XML, metadata and efficient knowledge discovery.* Pub. 2000. Elsevier Science B.V. (henceforth referred to as the Lang reference).

Claim Rejections - 35 USC § 112

A. Claims 1-16 are rejected under 35 USC § 112, first paragraph

In the Final Office Action, the Examiner rejected Claims 1-16 for failing to comply with the enablement requirement. In the Advisory Action, the Examiner found the Applicants' arguments to be persuasive and withdrew the rejection. The Applicants thank the Examiner for the withdrawal of the rejection under 35 USC §112, first paragraph.

B. Claims 2-3, 6, 10-11, 14, and 16 are rejected under 35 USC § 112, second paragraph

In the Final Office Action, the Examiner rejected Claims 1-16 for failing to comply with 35 USC §112, second paragraph. In the Advisory Action, the Examiner found the Applicants' arguments to be persuasive and withdrew the rejection. The Applicants thank the Examiner for the withdrawal of the rejection under 35 USC §112, first paragraph.

Claim Rejections - 35 USC § 102

C. Claims 1-2, 4-10, and 12-16 are rejected under 35 USC § 102(e) as being anticipated by the Copperman patent

The Applicants assert that the Copperman patent and its priority date of June 15, 2000, does not qualify as prior art under the provisions of 35 USC § 102(e).

The cited prior art does not establish a prima facie case of anticipation.

In order to establish a prima facie case of anticipation the Examiner must set forth an argument that provides (1) a single reference (2) that teaches or enables (3) each of the claimed elements (as arranged in the claim) (4) either expressly or inherently and (5) as interpreted by one of ordinary skill in the art. All of these factors must be present, or a case of anticipation is not met.

The Applicants assert that the Examiner has failed to establish a single reference that teaches or enables each of the elements of the claimed invention. Specifically the Applicants submit that the Examiner has failed to set forth a prima facie case of anticipation because Applicants firmly believe that that the present invention was conceived prior to the publication date of the Copperman patent, and as such, the Copperman patent should not be considered prior art with respect to the present invention.

To overcome a 35 USC § 102(e) rejection, the Applicants, or Assignee when the inventors are unavailable to make such a Declaration on their own behalf, may antedate a reference which qualifies as prior art under 35 USC § 102(e), where the reference has a prior art date under 35 USC § 102(e) prior to Applicants' effective filing date, and shows but does not claim the same patentable invention.

37 CFR 131(b) has been further reproduced for the Examiner's reference: *The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.*

The Applicants wish to direct the Examiner's attention to Appendix A which contains a declaration under 37 C.F.R. 1.131 which has been signed on behalf of the unavailable inventors by a representative of the Assignee, HRL Laboratories. The present invention has been shown to have been actually reduced to practice at least as early as May of 1999, within the United States and prior to the earliest effective date of the Copperman patent. Thus, the Applicants believe that in view of the 37 C.F.R. 1.131 declaration, the Copperman patent can no longer be considered as prior art with respect to the present invention.

Further it has been held that waiting on an attorney to draft and file a patent application is diligent. Reasonable diligence is all that is required of the attorney. Bey v. Kollonitsch, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986). Reasonable diligence is established if the attorney worked reasonably hard on the application during the continuous critical period. See id. If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is sufficient. See id.

As applied to the present case and as authenticated with the signature below, the Applicants' attorney was in the process of preparing the patent application during the time between the actual reduction to practice and the filing date. During the time between the actual reduction to practice and the filing of the present invention, the Applicants' attorney had a reasonable backlog of unrelated cases and took up the cases in chronological order and diligently and expeditiously carried out the cases until their respective filing dates. Thus, the present application was diligently prepared by the attorney until its filing date.

Therefore, the Applicants respectfully request that the Examiner withdraw this rejection under 35 USC § 102(e) and provide for timely allowance of Claims 1-2, 4-10, and 12-16.

Claim Rejections - 35 USC § 103

D. Claims 3 and 11 are rejected under 35 USC 103(a) as being unpatentable over the Copperman patent in view of the Lang reference

The Examiner has misinterpreted the combination of the Copperman patent and the Lang reference to teach all of the limitations of Claim 3 and 11.

The Copperman patent should not be considered prior art with respect to the present invention

As stated above, the Applicants wish to direct the Examiner's attention to Appendix A which contains a Declaration under 37 C.F.R. 1.131 which has been signed by an authorized representative of the Assignee on behalf of the unavailable inventors. The present invention has been shown to have been actually reduced to practice at least as early as May of 1999, within the United States and prior to the earliest effective date of the Copperman patent. Thus, the Applicants believe that with the §1.131 declaration, the Copperman patent can no longer be considered prior art with respect to the present invention. Therefore, as the Examiner has relied on a patent which does not qualify as prior art under 35 USC § 102(e), the Copperman patent in any combination does not

constitute a *prima facie* case of obviousness. Therefore, the Applicants respectfully request that the Examiner withdraw this rejection under 35 U.S.C. § 103(a) and provide for timely allowance of Claims 3 and 11.

Furthermore, as noted above, the Applicants submit that Claims 1 and 9 are patentable. The Applicants submit that Claims 3 and 11 are also patentable over the cited art, at least based on their dependence upon an allowable base claims (Claim 1 and 9 respectively), and therefore respectfully request reconsideration and allowance of these claims.

CONCLUDING REMARKS:

The Applicants respectfully submit that, in light of the above amendments/remarks, the application and all pending claims are now in allowable condition. Therefore, reconsideration is respectfully requested. Accordingly, early allowance and issuance of this application is respectfully requested.

Any claim amendments that are not specifically discussed in the above remarks are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments. Rather, these amendments have only been made to increase claim readability, to improve grammar, and to reduce the time and effort required of those skilled in the art to clearly understand the scope of the claim language. Furthermore, any new claims presented above are of course intended to avoid the prior art, but are not intended as replacements or substitutes of any cancelled claims. They are simply additional specific statements of inventive concepts described in the application as originally filed.

Further, it should be noted that amendment(s) to any claim is intended to comply with the requirements of the Office Action in order to elicit an early allowance, and is not intended to prejudice Applicant's rights or in any way to create an estoppel preventing Applicant from arguing allowability of the originally filed claim in further off-spring applications.

In the event the Examiner wishes to discuss any aspect of this response, or believes that a conversation with either Applicant or Applicant's representative would be beneficial, the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

The Commissioner is authorized to charge any additional fees that may be required or credit overpayment to the attached credit card form. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of

the number of months necessary to make this response timely filed. The petition fee due in connection therewith may be charged to deposit account no. 50-2738 if a credit card form has not been included with this correspondence, or if the credit card could not be charged.

Respectfully submitted,

5/22/08

Date

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Attachments:

Declaration under 1.131

Invention Disclosure